REMARKS

This Amendment is submitted in answer to the Office Action dated August 15, 2007, having a shortened three month period set to expire November 15, 2007.

I. CLAIM REJECTIONS UNDER 35 U.S.C. § 101

On page 2 of the present Office Action, Claims 10 and 17 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. In response, Applicant has proposed an amendment to Claim 10 to specifically recite "a method for providing a service." Because a method falls within the statutory class of processes, Applicant respectfully submits that the § 101 rejection of Claim 10 is overcome.

Applicant respectfully traverses the rejection of Claim 17 under 35 U.S.C. § 101 because Claim 17 recites a "server," which is a statutory apparatus. Because Claim 17 recites statutory subject matter, Applicant respectfully submits that the rejection of Claim 17 under 35 U.S.C. § 101 is not well founded and should be withdrawn.

II. CLAIM REJECTIONS UNDER 35 U.S.C. § 112

On page 2 of the present Office Action, Claims 1, 4 and 8 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite, supposedly for being a literal translation from a foreign document. In response, Applicant respectfully points out that the present claims are not translated from a foreign document and respectfully traverses the rejection in view of the amendments and remarks made herein.

A. Claim 1

At page 3 of the present Office Action, Claim 1 is rejected for reciting "delivering the snippet .." and "sending the first and second objects to the client responsive to a request from the snippet". In view of the non-narrowing amendment to Claim 1 to eliminate the first of these phrases and the lack of need for antecedent basis for "a request" as recited in the second of the phrases, Applicant

respectfully submits that the rejection of Claim 1 under 35 U.S.C. § 112, second paragraph, is overcome.

B.   Claim 2

Claim 2 is rejected for reciting "a minimum transmission unit" because the Examiner professes not to understand to what the term refers. In response, Applicant respectfully points out that minimum transmission unit is a well known term in the networking arts, for example, in connection with the TCP/IP protocol suite upon which Internet communication is based. The term "minimum transmission unit" is further described in detail in the present specification at page 9, lines 1-17. Accordingly, Applicant respectfully submits that the term would not be indefinite to the person of ordinary skill in the art and that the rejection of Claim 2 under 35 U.S.C. § 112, second paragraph, is overcome.

C.   Claim 8

In response to the rejection of Claim 8, Applicant has amended Claim 8 to remove any indefiniteness by specifically reciting first and second requests. Accordingly, Applicant respectfully submits that the rejection of Claim 8 under 35 U.S.C. § 112, second paragraph, is overcome.

III.   CLAIM REJECTIONS UNDER 35 U.S.C. § 102

On page 4 of the present Office Action, Claims 1 and 9 are rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,731,600 to *Patel et al. (Patel)*. That rejection is respectfully traversed, and favorable reconsideration of the claims is requested.

A.   Independent Claim 1

Applicant respectfully submits that *Patel* does not render Claim 1 unpatentable under 35 U.S.C. § 102(e) because *Patel* does not disclose (or render obvious) the following feature of Claim 1:

> instructions for delivering a snippet to the client responsive to the client accessing the server, wherein the snippet is an executable configured to request the server to serve, consecutively, first and second objects to the client.

With reference to the claimed "instructions for delivering a snippet to the client," page 4 of the present Office Action cites *Patel's* disclosure in its Abstract of server computer transmitting data packets to a client computer. *Patel*, however, does not disclose a server "delivering a snippet to the client, … wherein the snippet is an executable configured to request the server to serve, consecutively, first and second objects to the client" (emphasis supplied). Because *Patel* does not disclose "instructions for delivering a snippet to the client" as claimed, Applicant respectfully submits that the rejection of Claim 1 under 35 U.S.C. § 102(e) in view of *Patel* is overcome.

The foregoing remarks made with reference to Claim 1 also overcome the rejections of Claims 2-9, which depend therefrom.

B. Dependent Claim 9

Claim 9 is also not rendered unpatentable by *Patel* because *Patel* does not disclose:

instructions for invoking the snippet multiple times to obtain multiple estimates of the bandwidth; and
instructions for selecting a highest obtained bandwidth from among the multiple estimates of the bandwidth as the estimated bandwidth.

With reference to these feature of Claim 9, page 6 of the present Office Action again cites *Patel's* Abstract. However, because *Patel* does not disclose the claimed snippet, *Patel* does not disclose instructions for invoking the snippet multiple times as recited in Claim 9. Moreover, *Patel* does not disclose (and the Examiner does not allege *Patel* discloses) selecting a highest obtained bandwidth from among multiple estimates. Applicant therefore respectfully submits that the rejection of Claim 9 under 35 U.S.C. § 102(e) in view of *Patel* is overcome.

IV. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

On page 6 of the present Office Action, Claims 2-8 and 10-20 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,731,600 to *Patel et al.* (*Patel*) in view of U.S. Publication No. 2001/0010059 to *Burman et al.* (*Burman*). That rejection is also respectfully traversed.

A.   Independent Claim 10

Applicant respectfully submits that the combination of *Patel* and *Burman* does not render Claim 10 unpatentable under 35 U.S.C. § 103 because that combination does not disclose or render obvious the following feature of Claim 10:

> a service provider receiving, from a server, a request for bandwidth estimation of a bandwidth of a connection between the server and the client.

With respect to the above step of Claim 10, the present Office Action does not cite any passage within *Patel* or *Burman* as disclosing a request for bandwidth estimation or the receipt of such a request by a service provider. Further, upon review of the references, Applicant submits that the combination of references does not disclose or render obvious the above-cited step of Claim 10. Applicant therefore respectfully submits that the rejection of Claim 10 under 35 U.S.C. § 103 in view of the combination of *Patel* and *Burman* is overcome.

The rejection of Claim 10 under 35 U.S.C. § 103 in view of the combination of *Patel* and *Burman* is also overcome because that combination of references does not disclose or render obvious the following step of Claim 10:

> the service provider responding to the request for bandwidth estimation by providing the client with a snippet that is an executable configured to request the server to serve first and second objects, in a chronologically sequential manner, to the client via the connection.

With respect to the above step of Claim 10, page 10 of the present Office Action cites col. 2, lines 34-36 of *Patel* as teaching the server transmitting first and second data packets to the client. The cited passage of *Patel*, when viewed in combination with *Burman*, does not disclose or render obvious the claimed request for bandwidth estimation or a service provider responding to such a request by providing the client a snippet configured to request the server to serve chronologically sequenced first and second objects to the client. Applicant therefore respectfully submits that the rejection of Claim 10 under 35 U.S.C. § 103 in view of the combination of *Patel* and *Burman* is overcome.

The foregoing remarks made with reference to Claim 10 also overcome the rejections of Claims 11-16, which depend therefrom.

B.   Independent Claim 17

Applicant respectfully submits that the rejection of Claim 17 under 35 U.S.C. § 103 in view of the combination of *Patel* and *Burman* is overcome because that combination of references does not disclose or render obvious the following feature of the server set forth in Claim 17:

> the server being configured to ... provide, to the client in response to the client accessing the server, a bandwidth estimation snippet that is an executable configured to request the server to transmit, in chronologically adjacent transactions, first and second objects to the client.

With respect to the above feature of Claim 17, page 13 of the present Office Action again cites col. 2, lines 34-36 of *Patel* as teaching the server transmitting first and second data packets to the client. The cited passage of *Patel*, when viewed in combination with *Burman*, does not disclose or render obvious a server responding to a client access by providing the client a bandwidth estimation snippet configured to request the server to transmit first and second objects in chronologically adjacent transactions to the client. Applicant therefore respectfully submits that the rejection of Claim 17 under 35 U.S.C. § 103 in view of the combination of *Patel* and *Burman* is overcome.

C.   Dependent Claims 3, 13 and 20

The rejection of exemplary dependent Claim 3 under 35 U.S.C. § 103 in view of *Patel* and *Burman* is also believed to be overcome because the cited combination of references does not disclose or render obvious:

> instructions for transmitting the first and second objects to the client from a content distribution network server that is architecturally proximal to an ISP of the client.

In the rejection of Claim 3 set forth at pages 7-8 of the present Office Action, the Examiner does not cite any feature of the prior art as disclosing the claimed "content distribution network

server." Accordingly, the present Office Action does not set forth a *prima facie* case of obviousness, and the rejections of Claim 3 and similar Claims 13 and 20 under 35 U.S.C. § 103 are overcome.

D.   Dependent Claims 4 and 14

The rejection of exemplary dependent Claim 4 under 35 U.S.C. § 103 in view of *Patel* and *Burman* is also believed to be overcome because the cited combination of references does not disclose or render obvious:

> ... the second object has a size less than or equal to a minimum transmission unit associated with the network, wherein the second object is prevented from fragmentation.

In the rejection set forth at page 8 of the present Office Action, the Examiner does not cite any feature of the prior art as disclosing <u>the second object having a size less than a minimum transmission unit</u> or <u>preventing fragmentation of the second object</u>. Accordingly, the present Office Action does not set forth a *prima facie* case of obviousness, and the rejections of Claim 4 and similar Claim 14 under 35 U.S.C. § 103 are overcome.

E.   Dependent Claims 5 and 16

The rejection of exemplary dependent Claim 5 under 35 U.S.C. § 103 in view of *Patel* and *Burman* is also believed to be overcome because the cited combination of references does not disclose or render obvious:

> wherein the snippet includes:
>   instructions for creating first and second image objects;
>   ...
>   instructions for associating the first and second image objects with the first
> and second objects on the server.

In the rejection set forth at pages 8-9 of the present Office Action, the Examiner cites *Patel's* disclosure of video, text, graphic and other types of data objects as disclosing "instructions for creating first and second image objects." However, the mere disclosure of conventional data objects

by *Patel* does not disclose or render obvious <u>a server-supplied snippet</u> that creates first and second image objects as claimed.
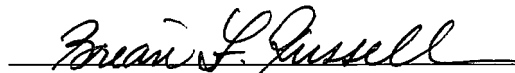
Page 9 of the present Office Action further cites *Burman's* disclosure of conventional URLs as disclosing the claimed "instructions for associating the first and second image objects with the first and second objects on the server." However, the conventional URLs disclosed by *Burman* do not associate image objects created by a snippet with corresponding objects on a server, but instead merely serve as a proxy for a network address of an object, as noted by the Examiner. Because the combination of *Patel* and *Burman* does not disclose "instructions for creating first and second image objects" or "instructions for associating the first and second image objects with the first and second objects on the server," Applicant respectfully submits that the rejections of Claim 5 and similar Claim 16 under 35 U.S.C. § 103 are overcome.

V.   CONCLUSION

Having now addressed and overcome each outstanding rejection, Applicant respectfully submits that all claims now pending are in condition for allowance and respectfully requests such allowance.

No extension of time for this response is believed to be necessary. However, in the event an extension of time is required, that extension of time is hereby requested. Please charge any fee associated with an extension of time as well as any other fee necessary to further the prosecution of this application to IBM Corporation Deposit Account No. **09-0447**.

Respectfully submitted,

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